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**APR 27 2006**

**OFFICE OF PETITIONS**

DARBY & DARBY P.C.  
P. O. BOX 5257  
NEW YORK, NY 10150-5257

In re Application of :  
Takahashi, et al. : DECISION ON PETITION  
Application No. 09/998,621 :  
Filed: November 30, 2001 :  
Docket No.: 3404/OK075 :

This is a decision on the petition, filed March 24, 2006, under 37 CFR 1.181 to withdraw the holding of abandonment.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is not a final agency decision.

The application became abandoned September 7, 2005 for failure to timely submit a proper reply to the non-final Office action mailed June 6, 2005. The non-final Office action set a three (3) month statutory period for reply. Notice of Abandonment was mailed February 27, 2006.

Petitioners allege non-receipt of the Office communication mailed June 6, 2005.

In the absence of any irregularity in the mailing of the Office communication, there is a strong presumption that the Office communication was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office communication was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See, MPEP 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office

communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

In support of the petition, petitioners have provided a copy of the docket record where the Office communication would have been entered had it been received along with a statement from practitioner and practitioners' Records Department Manager that a search of the docket record and file jacket indicated that the Office communication was not received.

Petitioners arguments have been carefully considered by are not found convincing.

Where an application becomes abandoned as a consequence of a change of correspondence address (the Office action being mailed to the old, uncorrected address and failing to reach the applicant in sufficient time to permit a timely reply), petitioners are required to establish that due care was taken to adhere to the requirement for prompt notification in each concerned application of the change of address (See, MPEP 601.03), and must include an adequate showing that a timely notification of the change of address was filed in the application concerned, and in a manner reasonably calculated to call attention to the fact that it was a notification of a change of address. See, MPEP 711.03(c).

Office records indicate the Office communication was properly mailed to the correspondence address of record at the time of mailing (specifically, the correspondence address as of June 6, 2005, the date of mailing of the Office action was: Peter C. Schechter, Darby & Darby P.C., 805 Third Avenue, New York, New York 10022). Accordingly, there was no irregularity in mailing the Office communication on the part of the United States Patent and Trademark Office as a change of correspondence address/customer number update was entered July 5, 2005, subsequent to the date of mailing of the Office action (Customer Number 7278 was updated July 5, 2005 to reflect: Darby & Darby P.C., P.O. Box 5257, New York, New York 10150-5257).

#### **ALTERNATE VENUE**

Petitioners are strongly urged to consider filing a petition stating that the delay was unintentional. Petitioner's attention is directed to 37 CFR 1.137(b) which provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable". An "unintentional" petition under 37 CFR

1.137(b) must be accompanied by the required petition fee and reply.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail:

**Mail Stop Petition**  
Commissioner for Patents  
P.O. Box 1450  
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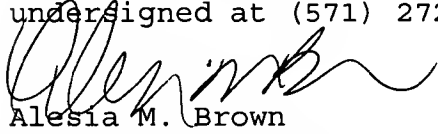
By facsimile:

(571) 273-8300

By hand delivery:

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Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.



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Office of Petitions